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THE STATUS OF AIRSPACE FOR UNMANNED AERIAL VEHICLES (UAVS) AND THE ISSUE OF AIRSPACE TRESPASS: THE TAWHIDIC EPISTEMOLOGY APPROACH

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Abstract:

This paper evaluates the legal status of airspace and the concept of ownership in relation to the unmanned aerial vehicles (UAVs) and the issue of trespass through the lens of *Tawhidic* epistemology. The current Malaysian legal framework and international level reveal a significant loophole, as the UAV operational airspace has yet to be formally declared, creating uncertainty over ownership, control, and liability. *Tawhidic* views the integration of ownership as trust (*amanah*) and serves for the public interest (*maslahah*). Drawing from the Islamic jurisprudence on the doctrine of ownership, this research argues that airspace governance must reflect both divine unity and human accountability. The dynamic principle of revival of dead land (*ihya al-mawat*) enriches this analysis by emphasising the concept of UAV airspace as *mawat* land that can be cultivated within the concept of ownership of airspace. Within this framework, customary practice (*'urf*) plays a vital role in shaping the contextual application of the rule, which is consistent with the higher objective of shariah (*maqasid al-shariah*). The hybrid approach of this research consequently solves the issue of airspace ownership for UAVs by combining doctrinal legal analysis with epistemological reasoning.

Keywords:

Airspace, *Maqasid al-shariah*, Ownership, *Tawhidic*, Trespass, UAVs, *'Urf*.



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Introduction

Islamic law (*Shariah*) is a comprehensive system that governs all aspects of human life, including technological advancements like unmanned aerial vehicles (UAVs). *Shariah* provides enduring principles that remain relevant through mechanisms of *ijtihad* (independent reasoning), *qiyas* (analogy deduction), *maslahah* (public interest), and *'urf* (customary practice). These principles are relevant to coping with the issue involving technology and still align with the divine purpose of *shariah* (*maqasid al-shariah*). In contrast to the conventional literal approach to *ijtihad*, the discussion of *maqasid* represents a substantial shift. This can be achieved by using Islamic jurisprudence's *istiqra*, or inductive reasoning, to interpret the *shariah* laws consciously (Mek Wok Mahmud & Sayed Sikandar Shah, 2010). The objective of *shariah* (*maqasid al-shariah*) is a divine wisdom and an indicator used in deriving a rule or law involving a *shariah* matter. The word of *maqasid* literally means goal, purpose, and objective (Kamali, M. H., 2025). The concept of *maqasid* is concerned with the purpose of law, which evaluates the end result of which is somehow akin to the philosophy blended with the rationale and causes, benefit, and harms of the rule (Kamali, M. H., 2025). The *maqasid al-shariah* enable the development of a rule based on a purposeful decision. The scholar uses the *maqasid al-shariah* to interpret the text ruling. *Maqasid al-shariah* serves as an ethical and philosophical framework in the digital age. The integral component of *maqasid al-shariah* is commonly divided into three hierarchical levels, which are, first, essential (*daruriyah*). This philosophy emphasizes five primary objectives (*al-dharuriyyat al-khams*) that must be protected: religion (*al-din*), life (*al-nafs*), reason (*al-'aql*), lineage (*al-nasl*), and property (*al-mal*) (Taofeeq Olamilekan Sanusi, 2025). Second is necessity (*hajjiah*), which are not essential for survival, but removing them may provide ease in life. Removing it may not destroy society, but it may cause difficulty. Third is complementary (*tahsiniah*), which promotes moral and ethical excellence, representing what is desirable for the perfection and dignity of society. As a result, all three levels of human interests, vital needs, complementary needs, and improvement requirements are addressed by the *Shariah* laws and regulations.

Unmanned aerial vehicles (UAVs) are becoming more widely recognized in Malaysia, both for personal and commercial purposes, as a result of the country's present digital revolution. Due to their small size, light weight, and speed, UAVs are partially practical for commercial applications. Some individuals view UAVs as artificial intelligence devices with intelligent features because of their nature (Onn, N. E., 2022). The rapid growth of technology is not consistent with the legislation, in which none of the states across the world dare to proclaim a particular altitude of airspace as navigable airspace for UAVs. The goal of *shariah* (*maqasid al-shariah*) is the basis for the use of UAVs in the commercial sector. The hierarchy of commercial UAVs most likely comes under *tahsiniyyah*, which may be desirable only to perfect the circle of livelihood. To put it simply, UAVs are used commercially to enhance human life; their absence does not interfere with human life. However, the pertinent industries determine how urgent commercial UAVs are (Onn, N. E., 2024). On the other hand, in some situations, such as the Covid-19 catastrophe, commercial UAVs might become *hajjiyyah* or even *daruriyah* if they could lower the chance of contracting the virus, particularly while transporting medical samples and tests for life-saving measures. Only a specific area of the economy can embody

the idea of *hajiyyah* for commercial UAVs. For example, the lack of labour in the agricultural sector makes commercial UAVs important in the hierarchy of *hajiyyah*. The effectiveness of commercial UAVs in agriculture is also linked to the production of national commodities, which contributes to establishing ease and alleviating hardship (Onn, N. E., 2024).

Methodology

This article is a combination of doctrinal and qualitative research. The method used in this article is by analysing the Islamic legal framework of both primary and secondary sources that are relevant to commercial UAVs. The data collected in this article is a content analysis where the existing law from the primary legislation, case law, the texts and provisions of the primary sources of Islamic law, and secondary sources of Islamic law are referred to in this article. The approach of inductive analysis is inspired in this article by organizing the discussion of the relevant legal issues connected with the primary sources of laws, especially verses from *Al-Quran* and *As-sunnah*. Furthermore, the selective controversial legal issues are gathered in this article to analyse the relevance of the selective verses of *Al-Quran* and *As-sunnah* towards the contemporary issues. The discussion of secondary sources of Islamic law, which is *'urf* and *maslahah*, is gathered to integrate the analysis systematically and sync with the primary sources of Islamic law.

Following the doctrinal mapping, the analysis proceeds to identify the normative gaps within the regulatory tension within the legal framework that could be filled by the *tawhidic* epistemology in order to achieve the analytical depth and legal credibility. The structural analysis of this article is mainly connected with the legal implications *vis-à-vis* commercial UAV, especially in safety and risk in case of trespass of airspace. The discussion of private use of UAVs and law enforcement UAVs is excluded from this research. Thus, the purpose of this research is to investigate the *tawhidic* epistemology of UAV airspace in conjunction with the concept of airspace ownership and the issue of trespass.

Tawhidic Epistemology of Uavs' Airspace.

Indeterminacy jurisprudence frequently addresses epistemological questions. Indeterminacy refers to the lack of a single proper response to legal questions, which can be divided into two categories: metaphysical and epistemological. Metaphysical indeterminacy refers to the question of whether there is a legal framework for resolving legal matters and deciding cases. Epistemological indeterminacy refers to the ability of legal actors and decision-makers to understand the law and its requirements (Pill, S. C., 2018). The *Quran* and *Sunnah* have been viewed as foundational and definite sources of law rather than indeterminate jurisprudence. The *Quran* and *Sunnah* are often interpreted as a set of legal guidelines. Juristic interpretation, scholarly consensus, customs, and culture all play important roles in establishing varied understandings of Islamic law. Neither the *Quran* nor the *Sunnah* has provided, nor are they anticipated to provide, a comprehensive law governing every facet of human existence. The entire text of the *Quran* and the collection of *hadith* can be examined to confirm the goals or objectives of the law (*maqasid al-Shariah*). The Muslim jurists used juristic reasoning (*ijtihad*) to realize the *maqasid* by taking into account the fundamental goals of the law. After consulting the *Quranic* texts and legal *hadith* (*ahadith al-ahkam*), they progressively developed the idea and language of the legal maxims (Mahmood M Sanusi, 2006). One Islamic legal maxim that is crucial to mention in relation to commercial UAVs is *al-umuru bi-maqasidiha*, which states that matters will be determined by the intent and purpose (Da'wah Institute of Nigeria & Islamic Education Trust, 2015). According to Ibn Taymiyya, the breadth of this maxim comprises the moral requirement that people and groups bear the consequences of potentially

damaging activities when those consequences are foreseen and avoidable (Da'wah Institute of Nigeria & Islamic Education Trust, 2015). The use of UAVs carries expected dangers, including the possibility of harming people, property, and even animals. The maxim says that a Muslim should establish acceptable goals in specific areas while anticipating the repercussions. Similarly, commercial UAVs are evaluated based on their goals, which vary depending on the sector and urgency.

The law governing airspace ownership in Malaysia is derived from the context of land law. The proprietor of land shall have exclusive rights over the surface of land, the subsoil of land, as well as the reasonable airspace (Section 44(1) (a) of the National Land Code 1965). The definition of 'reasonable airspace' restricts who can own airspace in Malaysia. The term 'reasonable' is evaluated on a case-by-case basis and is not absolute. There is no precise altitude that is exclusively owned by the owner. Now, both private and public bodies can own the airspace. The navigable airspace is classified as federal or public airspace, and it is reserved exclusively for manned aircraft at an altitude of 500 feet above the land surface. According to international customary law, the minimum navigable airspace is 500 feet above the land's surface (Air Traffic Services, Annex 11 of the Convention on International Civil Aviation). Although there is no exclusive altitude specified in the legislation for UAV airspace, Rule 140(4) of the 2016 Malaysian Civil Aviation Regulations allows UAVs to fly at a maximum altitude of 400 feet over the surface of the land. The laws do not enumerate a minimum altitude for flying the UAV, which may establish a legal loophole that could lead to trespass on the proprietor's land. This has raised the question of who is the owner of airspace at an altitude below 400 feet above the surface of the land?

On the other hand, the common law notion of airspace originated from the maxim of *cujus est solum, ejus est usque ad coelom*, which is decoded as 'anyone who owns the land owns all the space above to an unlimited extent'. The maxim gives the proprietor unlimited ownership over the airspace. In the classic case of *Causby*, the court decided the principle of *ad coelom* of airspace, which states that a proprietor has reasonable ownership of low-altitude airspace and exclusive control of the immediate reaches of the surrounding atmosphere. As a result, the defendant was found guilty of trespassing (*United States v. Causby*, 1946).

The strategy and technique of Islamic jurisprudence are best suited to highlighting Islamic perspectives in assessing airspace ownership in order to stimulate the scope of rules and regulations on airspace ownership and trespass. The legal discussion revolves around the concepts of ownership and trespass. If you are the owner, the issue of trespass does not apply. However, if you do not own the property but encroach on the owner's right to utilize it, it will be considered trespass. The Islamic notion of land ownership gives rise to the society's customary practice in adapting to the scope of proprietors' rights over the airspace as well as the ground beneath the land. The notion of property protection under *maqasid al-shariah* is dependent on land ownership (Onn, N. E., 2024).

According to several *Quranic* passages on the concept of land ownership, it is absolute to Almighty Allah, who owns the all-inclusive and exclusive heaven and earth. Allah mentions in the Holy *Quran*, "It is He who has made the earth manageable for you, so traverse through its tracts and enjoy the sustenance He furnishes but unto Him is the resurrection." (Al-Mulk, 67:2). Allah said further, "All that is in the heavens and on the earth belong to Allah s.w.t." (An-Nisa, 4: 126 & 134). These *Quranic* verses emphasized Allah's total ownership of the entire earth and heaven. The creation and appointment of humans as vicegerents on Earth demonstrate that

humans only have property as a trust from Almighty Allah to handle it justly and properly in accordance with divine revelation. The Quran mentions the creation of humans as vicegerents on the earth, demonstrating the unique position of humans who are bestowed with intellect (*aql*) by Allah to manage the earth wisely, even if the consequences of the acts that they choose are sometimes in line with Islamic principles and *summatullah* and sometimes not (Onn, N. E., 2024).

Further, Allah said in the *Quran* as follows:

“And spend of that whereof He has made you His vicegerents.”(Al Hadid, 57: 7). Moreover, Allah mentions in the *Quran*, “And when thy Lord said to the angels: 'I am about to place a vicegerent in the earth, they said: Wilt Thou place therein such as will cause disorder in it, and shed blood? and we glorify Thee with Thy praise and extol Thy holiness.' He answered: 'I know what you know not.’” (Al-Baqarah, 2:30)

Allah's grant of authority to humanity in managing the planet is subject to the severe laws he has established. It might be deduced from this that Allah owns the airspace up to navigable airspace, and humanity owns the airspace in trust to use it wisely as long as it benefits society. In summary, the concept of land ownership in Islam is founded on trust and agency, with humans acting as agents to use Allah's resources to benefit the entire society (Onn, N. E., 2024).

Cultivate The Uncultivated Airspace for Uavs.

Islam's ownership restrictions and limitations have elevated humanity's role as Allah's servant. Four main types of property tenure that originated from Islamic legal traditions were recognized by the Ottoman Code of 1858, which codified Islamic land principles: The first is full ownership (*mulk*), also known as full private ownership or freehold in Western terminology; the second is state-owned property (*miri*), which the state holds as Allah's agent and in the trust of the Muslim community, and over which individuals can form a variety of access and usufruct rights; Third, endowed land (*waqf*) is the property that has been permanently settled for the benefit of beneficiaries, either for designated purposes or for the general welfare, and fourth, unused or dead land (*mawat*) that can be rehabilitated and changed into private land. (Sait, S. & Peters, B., 2011). All land and airspace that embody the notion of *mulk* belong to Allah. Private ownership is encouraged in Islam, as long as it does not endanger others or society. Nonetheless, even though such ownership is based on Islam, the State reserves the authority to take it from him if the need arises or if it is for the welfare of society (*maslahah*) (Siti Mariam Malinumbay S. Salasal, 1998). Due to the unused airspace, which was located between the proprietors' airspace and the navigable airspace and ranged in altitude from 200 to 400 feet above the ground, the UAV's airspace might be classified as *mawat*. The idea behind *mawat* land is to revitalize and restore the uncultivated land (*Ihya al-mawat*). An analogous strategy can be applied to UAVs' navigable airspace (Onn, N. E., 2024). However, some contend that as *mawat* land is uncultivated and has no owner, title is vested in the state and that individual acquisition occurs by rehabilitation through cultivation, occupation, or construction in accordance with *shariah* principles, with or without the state's approval (Siti Mariam Malinumbay S. Salasal, 1998).

The Civil Aviation Authority Malaysia (CAAM) may eventually claim this *mawat* airspace as UAV navigable airspace, which will then probably be transformed into a *miri* for the integration of both manned and unmanned aircraft navigable airspaces (Onn, N. E., 2024). The following are some relevant hadith narrated in reference to the practice of *ihya al-Mawat* (Siti Mariam

Malinumbay S. Salasal, 1998): “He who brings a dead land back to life will own it, and he who seeks to utilise it by force has no right or title to it at all.”(Sahih Al Bukhari, translated by M.Muhsin Khan, 2009) Furthermore, it was narrated by Sa'eed bin Zaid, “Whoever revives dead land, it is his, and that which is unlawfully planted confers no rights,” says another hadith of the Prophet (pbuh) on *mawat* land (Sunan Abu Dawud, translated by Nasiruddin al-Khatta, 2008). Particularly when it comes to economic and trade agreements, the use of UAVs in airspace is regarded as introducing *ihya* to the *mawat* land. Additionally, if private airspace is involved, it is acceptable to lease it to commercial UAVs. This enshrined the concept of easement of land as per the National Land Code (Malaysia) (Onn, N. E., 2024). In the hadith of the Prophet, narrated by ‘Amr, “It is permissible to rent the land for cultivation. One had better give the land to one's brother gratis rather than charge a certain amount for it.” (Sahih Al Bukhari, translated by M. Muhsin Khan, 2009).

Maslahah For the UAV Airspace.

The Maliki School advocates a strategy known as *istislah*, or reliance on *maslahah* (public interest), which is comparable to *istihsan*. This principle requires jurists to take into account the extent to which any suggested legal result upholds or compromises the intricate conceptual framework of the *maqasid al-Shari'a*, or the objective of the *Shariah*. The preservation of faith, life, family, intelligence, and property is among these objectives. The concept of *istislah*, also known as *al-masalih al-mursala* (the unimplemented public good), is used to establish judicial decisions as Islamic standards based only on how well they are thought to advance the goals of the *Shariah* (Pill, S. C., 2018). A valid verdict based on *maslahah* must fulfil a number of requirements. A ruling's purported benefit must first not be unduly speculative; there must be a reasonable probability that the benefits of enacting a *hukm* in the pursuance of *maslahah* outweigh the harms that might result (Kamali, M. H., 2019). Second, the decision must either prevent a widespread harm or promote a general benefit. Creating a new Islamic regulation to address a benefit or harm that only affects a specific individual or small group is illegitimate. Third, a clear norm found in the *al-Quran* or *Sunnah* cannot be contradicted by a ruling based on *maslahah*. Lastly, the relationship between the stated legal rule and the driving concern for a certain *maslahah* must be logical and acknowledged by other rational individuals (Kamali, M. H., 2019).

In the context of UAVs, the principles of *maslahah* provide a legal and moral framework for assessing how UAV technologies should be regulated and developed, especially in terms of providing infrastructure for the airspace for UAVs. This is essential in order to serve human and societal good while avoiding potential harm. Having a clear law on the UAV airspace will contribute significantly to *maslahah* when used for beneficial purposes. For example, in terms of infrastructure, security, and monitoring are aligned with *maslahah ammah* (general welfare). This is also to avoid potential harm (*mafsadah*) as the UAV poses several risks that can threaten the *maqasid al-shariah* in terms of privacy intrusion, safety risk, and security threats. Commercial UAVs should fly in low-altitude airspace between 200 and 400 feet above the ground, without intruding navigable airspace or private landowners' airspace, to maximize economic profit while preserving societal welfare. UAVs are thought to be commercially viable at altitudes ranging from 200 to 400 feet, particularly in the logistics industry. These altitudes leave plenty of room for the successful deployment of commercial UAVs in the logistics industry (Onn, N. E., Khan, M. A., & Mokhtar, K. A., 2022). Therefore, the *tawhidic* epistemology integrates both spiritual and rational dimensions that can cope with technological advancement in order to achieve balance in regulating UAV airspace. *Maslahah* serves as a

link between positive and divine law, allowing UAV governance to reflect the wisdom of divine revelation, which is relevant for all human beings and throughout civilization.

'Urf As a Secondary Source of Hukum.

Aside from the basic sources of Islamic law, which are the al-Quran and the Prophet's (pbuh) Sunnah, Muslim scholars continue to use secondary sources of Islamic law to derive *hukum* to this day. *'Urf* (customary practice) is one of the secondary laws that are pertinent to this issue. The Arabic term *'urf* refers to customs and knowledge. *'Urf* refers to a society's customary practice that is recognized and well accepted by the society and is considered compatible with *Shari'ah* law. The recurring and widespread behaviour in society turns into a positive standard and is widely acknowledged as a tradition. *'Urf* cannot be adapted and put directly into one community because it varies from society to society. Islamic law is based on the Prophet's treatment of Arab tribes and other ethnic groups, which establishes an important precedent. Based on the principle of *al-'adah muhakkamah*, which refers to custom as a foundation of law, the Prophet supported a wide range of cultural norms and did not alter them until essential (Da'wah Institute of Nigeria & Islamic Education Trust, 2015). *'Urf* can be used in the framework of the transaction (*muamalah*), but not in the context of worship. (Yamamah, A., 2016). *'Urf* cannot be used in situations where the *naskh* clearly states that something is required (*fard/wajib*) or forbidden (*haram*). Muslim jurists are willing to make use of the secondary sources of *al-qawaid fiqhiah* even if the primary sources are silent on a certain *hukum*. *'Urf* must be rejected when it conflicts with divine directives found in the *hadith (naskh)* and the Al-Quran, creating a restriction on its use. *'Urf* can be divided into two categories: *'urf shahih* and *'urf fasid* (Yamamah, A., 2016). *'Urf shahih* is a form of *'urf* that does not conflict with *syara*. *'Urf* must be preserved in the formation of Islamic law and justice because it aligns with societal requirements and the communal benefit (Yamamah, A., 2016). Additionally, *'urf sahiih* is divided into *'urf amm* and *'urf khash*. *'Urf amm* typically refers to a commercial transaction that is widely acknowledged as a custom, a good standard, and something that people may agree upon at any moment. Consequently, *'urf amm* typically affects the community's formation of a common rule of law. On the other hand, *'urf khash* is a custom exclusive to a nation or a certain group, like customs among the traders. On the other hand, *'urf fasid* is a custom that opposes and conflicts with *syara*. This *'urf fasid* is unacceptable since it goes against the established *syar'i* (Yamamah, A., 2016).

UAVs are seen as a modern way to shape the new digital and technological era. Even if UAVs did not exist during the time of the Prophet Muhammad (pbuh) and the Companions, Muslim jurists would be prepared to align the laws of UAVs with the social norms. Regulations of UAVs can be deduced based on the *'urf* because customary practices and norms are a result of society's adaptation to commercial aviation. The history and development of the aviation industry, as well as the navigable airspace of manned aircraft established by the International Civil Aviation Organization (ICAO), which has become a customary international law and is widely accepted worldwide at an altitude of 500 feet above the surface of the land, demonstrate the reliability of the repeated practice of the norm and customary practice in lining up the ownership of airspace. Recognizing the manned aircraft's navigable airspace, or *'urf amm*, is a good practice in the global aviation sector. In the meantime, *'urf khash* will eventually develop due to the modifications and adaptations made to UAV airspace segregation. As of now, a few wealthy nations have embraced UAVs for commercial use (Onn, N. E., 2024).

It might also be deemed *'urf* if all the contracting parties agreed to such an arrangement and transplanted it into the national law. The ICAO, a United Nations agency, has been integrating manned aircraft and UAVs into navigable airspaces year after year, decade after decade. All parties to the Chicago Conventions agreed that *'urf*, or customary international law, governs manned aircraft's navigable airspace up to 500 feet over the ground (Onn, N. E., 2024). As long as the *'urf* does not contradict public interest or private property, it is consistent with Islamic values. Following the ICAO guidelines causes no harm to *Shariah*. Although UAVs have been around since 1980 in Japan (Sheets, K. D., 2018), commercial adoption of UAVs is still regarded as novel in most nations, as the ICAO has yet to decide and approve the segregation of UAV airspace. Soon, when all sectors of the economy use commercial UAVs in one society, the changes in acceptable practice in lining up airspace and laws related to UAVs will become a good norm and, as a result, be accepted as *'urf amm* as long as there is no contradiction or contravene with the *naskh* from *al-Quran* and *Sunnah* of the Prophet Muhammad (pbuh). For the time being, the navigable airspace for commercial UAVs can be concluded as *'urf khash*.

The aviation industry's explosive growth has led to the creation of legislation and regulations for other cutting-edge technologies. A definitive approach to the development of international customary law concerning the minimal limit of manned aircraft's navigable airspace is the uniformity of standards established by ICAO. As a result, the maximum line altitude for UAVs is 500 feet above the ground, which might be interpreted as *'urf amm*. However, because different nations may have different approaches, the division of airspace between the proprietors' and the UAVs' airspace has not yet become *'urf amm*. In a normative state, people accept cultural norms that are suitable for them and the situations, eras, and places they inhabit (Da'wah Institute of Nigeria & Islamic Education Trust, 2015).

In brief, *Maqasid al-Shariah* and tawhidic epistemology form an articulate Islamic legal epistemic framework. *Maqasid al-Shariah* is a hierarchical framework that incorporates *amanah*, *ihya al-mawat*, and *'urf* into a unified legal conclusion. *Maqasid* answers the 'which outcome best preserves overall justice?' The answer to this question is obtained by analysing through the hierarchy of *Maqasid*.

1. Protection of life (*hifz al-nafs*) refers to safety from aerial threats and risks.
2. Property protection (*hifz al-māl*) means preventing physical or economic harm.
3. Protecting privacy and dignity (*hifz al-'ird*) by securing personal places.
4. Promoting public interest (*maṣlahah*) through enabling beneficial innovation and technology.

The Tawhidic Lens on The Airspace Trespass.

The regulation of airspace and the doctrine of trespass have been conceptualised within the property-centric paradigm. If you are the owner of the property, you should have enjoyment over it rather than others. The maxim *cuius est solum, eius est usque ad coelum et ad inferos* governs how conventional common law handles airspace ownership. The case of *Causby* highlighted that the proprietor owns as much space above ground as they can occupy or utilize for their land. The court ruled that the fact that he does not physically occupy the property, such as through building structures, is irrelevant (*United States v. Causby, 1946*). The *ad coelum* doctrine is the oldest and most widely recognized. This recognizes the owner's title to a vertical column of air rising from the surface and reaching the sky. Any contested entry into the zone of possession, regardless of frequency, height, or damage, is considered trespass and can result

in legal action (Mace, R. A., 1948). Trespassing occurs when someone enters a piece of land illegally, rides or drives over it, takes possession of it, or drives the person in possession away; pulls down or destroys anything permanently fixed to it; wrongfully takes minerals from it; places or fixes anything on it or in it; or erects or permits to continue on his land anything that invades another's airspace, releases water onto another person's property, or sends filth or any other harmful substance that he has collected on his own onto another person's land (Halsbury's Laws of England, 4th ed., vol. 45.1999).

The *tawhidic* epistemology is premised on divine sovereignty. All creation of Allah, including airspace, is ultimately vested in Allah and human beings acting as *khulafa* (trustees). *Tawhidic* epistemology views airspace as a common trust (*amanah*) rather than indefeasible ownership. The legal issue that is usually attached to the concept of airspace ownership is the restrictive and limited usage of the ownership. This will give rise to the trespass issue. The concept of trespass or *tadakhul* involves interference in someone else's property and rights without the consent of the owner. The conventional trespass doctrine focuses on the physical intrusion into the proprietary space. *Tawhidic* epistemology reframes the doctrine of trespass by prioritising harm (*darar*) and violation of trust over the infringement. The scope of intrusion can be from physical to moral. The key indicator for trespass is whether the intruder gained prior permission or not for such an act of trespass. The *Quran* mentions as follows:

“O ye who believe! enter not houses other than your own until you have asked permission and saluted the inmates thereof. That is better for you, that you may be heedful.” (An-Nur, 24:28)

This highlights the manner in which to acknowledge the ownership of private property. Moreover, the protection of the property is to preserve the ownership and possession of the owner unless the owner himself gives such consent to disregard his rights. The application of trespass also involves encroachment on the proprietors' ownership unless prior consent is given by the proprietor. All human actions on this earth must respect Allah's law, including rights to space and safety. Knowledge and technology (UAVs) must be used responsibly and ethically, not to oppress or cause harm to humans, property, or even animals. The value in UAVs' airspace, which is right above the proprietors' airspace, will later create a controversial legal claim to the possibility of airspace trespass by the UAVs. Moreover, the *Quran* also expressly forbids believers from encroaching on another's property unless they do it legally, through lawful trade, or by consent (An-Nisa, 4:29). Further, a *hadith* of the Prophet (p.b.u.h) highlights a similar approach, “Everything that belongs to a Muslim, including his property, life, and honour, is forbidden to his fellow Muslims.” (English Translation of Sunan Ibn Majah vol 5, translated by Nasiruddin al-Khattab, 2007). The prohibition of trespass in Islam demonstrates the recognition of private individuals' conditional ownership of land. The manner in which prior consent is sought from the proprietor demonstrates the Islamic value of protecting an individual's property. The Islamic maxim of ‘*La Darar wa La Dirar*’, which means no harm, no recrimination, highlights that one must not harm others and one must not inflict harm upon others, and can be used to guide lawmakers to prevent injustice. The concept of trespass (*tadakhul*) always constitutes harm and directly violates the maxim of ‘*La Darar wa La Dirar*’. Next Islamic legal maxim of *al-asl fil ashya' al-ibahah*, which refers to the norm concerning things, is that of permissibility, where the *hukm* connected to the UAV is regarded as permissible (*mubah*) due to the natural state of UAVs until the permissibility becomes prohibition. The basic rule for *'urf* is permissible; thus, the burden of proof for whether or not a customary convention is impermissible falls only on those who oppose it, not on those who affirm it (Da'wah Institute of Nigeria & Islamic Education Trust, 2015). Therefore, in relation

to the trespass by UAVs, the rule of the permissibility of *'urf* can be aborted by the prohibition to enter the property of fellow Muslims.

Conclusion

The regulation of UAV airspace in Malaysia and across the nation remains challenged due to the ambiguities in declaring the airspace framework. This loophole definitely faces the possibility of the risk of trespass, privacy intrusion, and safety hazards, demonstrating the urgent need for a coherent legal and ethical approach. *Tawhidic* epistemology provides a holistic perspective that aims to attain a balance in applying divine principles of ownership, where Allah is the absolute owner of land and airspace. The principle of *maslahah* (public interest) is to ensure that UAV operations are beneficial to society as a whole. Malaysia can create a model and blueprint for the UAV infrastructure, particularly in lining up and segregating airspace, by coordinating the law with ethical epistemology. This is essential to prevent the problem of airspace trespassing across both proprietary and manned aircraft navigable airspace. Integrating the Islamic notion of *ihya al-mawat* into the airspace of UAVs shapes the concept of utilizing underutilized airspace for the benefit of society at large. To summarize, addressing the present issue of airspace through *tawhidic* epistemology provides comprehensive guidance for authorities and legislative bodies to implement airspace for UAVs, while balancing innovation, technology, and public welfare. Humans are appointed as *khalifah* by Allah, who is the ultimate owner of the earth and heaven, so that we can administer this world in accordance with His commands. One of the public interest directives is to establish an acceptable norm for dealing with technological innovation, particularly in the airspace for UAVs. In conclusion, *tawhid* defines the moral ontology of legal authority, while *maqasid al-Shariah* applies actual evaluative standards to balance individual rights, public interest, and technological advancements.

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